

CALIFORNIA INDIANS K-344

(Various Tribes of Indians located in California)

<u>Jurisdictional Act</u>	May 18, 1928, 45 Stat. 605; amended April 29, 1930, 46 Stat. 259
<u>Location</u>	California
<u>Population</u>	As of 1940 - 23, 276
<u>Amount Claimed</u>	\$12,800,000.00
<u>Nature of Claim</u>	Accounting and value of land taken without compensation under 18 Unratified Treaties.
<u>G.A.O. Report</u>	Forwarded to Department of Justice, May 31, 1934
<u>Court Action</u>	Decided October 5, 1942, referred to Commissioner to ascertain values, 98 C. Cls. 583. Plaintiffs' petition for writ of certiorari denied, June 7, 1943, 319 U.S. 764, 99C. Cls. 817. Judgment for plaintiffs entered December 4, 1944, 102 C. Cls. 837.
<u>Amount of Judgment</u>	\$17,053,941.98
<u>Offsets</u>	\$12,029,099.64

Statement of Case

In 1850 the Congress passed an act carrying an appropriation "to enable the President to hold treaties with the various Indian tribes in the State of California." 9 Stat. 544, 558. Commissioners to negotiate treaties were appointed by the President and during the period from March 1851 to January 1852, negotiated eighteen separate treaties with some of the tribes and bands of Indians of California. These tribes and bands of Indians constituted about one-third to one-half of the total number of members of the Tribes and bands in California at that time. The treaties were of the same general character. In each treaty there was set apart a certain district of country to be forever held for the sole use and occupancy of said tribes of Indians. The Indian tribes on their part agreed to forever quit claim to the United States any and all lands to which they or either of them then or may ever have had claim or title whatsoever. There were provisions made for the supplying by the United States to the Indians of cattle, farming implements, blacksmiths, and schools and teachers, to be maintained and paid for by the Government for a definite period. These treaties were transmitted to the Senate by President Fillmore. On June 28, 1852, the Senate refused to ratify all and several of the eighteen treaties.

The Indians of California consist of wandering bands, tribes, and small groups, who had been roving over the same territory during the period under the Spanish and Mexican ownership, before the treaty between Mexico and the United States whereby California was acquired by the United States. They had no separate reservations and occupied and owned no permanent sections of land. They and their forbearers had roved over this country for centuries. They possessed no title to any particular real property existing under the Mexican law in California. Hayt, Admn. V. United States and Utah Indians 38 C. Cls. 455. Ex Doc. No. 50. H. R. 30th Cong. 2d Sess. P. 77.

These Indians did not qualify before the Commission created by the Act of March 3, 1851, 9 Stat. 631, entitled “An Act to ascertain and settle the private land claims in the State of California”. Therefore, whatever lands they may have claimed became a part of the public domain of the United States. Barker v. Harvey, 181 U.S. 481; United States v. Title Insurance & Trust Co. et al., 265 U.S. 472.

However, these Indians were roving over the State of California when the “gold rush” began and the white man paid no attention to any claims the Indians asserted to any portion of this territory. This resulted in bloody clashes and reprisals.

The object of the National Government in providing a Commission to negotiate treaties with these Indians was to localize them on particular tracts and confine them in certain defined sections. There was no recognition of a claim of cession under the Mexican or Spanish law or the use and occupancy of any definite country. It was simply a fair and just solution of a very troublesome situation in a newly acquired territory and was to avoid clashes between the white and red men. The Government simply held out a promise to the Indians that certain territory would be ceded to them for their permanent residence and certain provisions were made to civilize what were considered uncivilized tribes, bands and groups. The Indians, bands, and Tribes, who signed these eighteen treaties, on their part agreed to move to these reservations, relinquish all claim to any and all other lands, and to abide in peace and harmony with the white man.

There was a promise made to these tribes and bands of Indians and accepted by them but the treaties were never ratified so the promise was never fulfilled.

From 1852 this matter lay dormant for almost eighty years. In 1928, Congress passed a private act, 45 Stat. 602, supra, which provided that the claims of these Indians should be adjudicated by the Court of Claims.

The plaintiffs’ position was that, under the terms of the jurisdictional act, the Congress Had admitted or assumed a limited liability arising out of the failure and refusal of the Senate to ratify the eighteen treaties, and the Court was only called upon to ascertain The amount due and enter a decree.

The defendant contended:

- (1) That the original petition not being within the authorization expressed in the Jurisdictional act, the Court was without jurisdiction of the amended petition, it having been filed after the expiration of the limitation contained in the jurisdictional act.
- (2) That the claim arising out of the alleged failure of the United States to protect the asserted property rights of the plaintiff, Indians under Spanish and Mexican law was without basis for the reason that they had no property rights as asserted.
- (3) That the language of the jurisdictional act relied upon by the plaintiffs as creating a right of recovery through an implied ratification of the eighteen ungratified treaties did not have that affect, but simply meant that “equitable relief” on the basis prescribed in the act should be applied by the Court if the failure of the United States to perform its assumed obligation under the treaty of Guadalupe Hidalgo and protect the property rights of the Indians of California presented a basis for judicial relief.

- (4) If the provision relied upon by the plaintiffs created a liability out of an alleged moral obligation, power to adjudicate the claim arising there under was not conferred upon the Court by the terms of the jurisdictional act.
- (5) The provision in question did not create or assume a liability but directed the Court to adjudicate a moral claim through the application of legal principles, and was therefore invalid.

The Indians of California, as defined in the jurisdictional act, are all Indians who were on June 1, 1852, residing in that State, and their living descendants.

The court held that “The Claim sued on is one arising under an act of Congress that says the promise made to these Indians in negotiating treaties with them, and afterwards not carrying out that promise by ratification, is sufficient to constitute an equitable claim allowing all the Indians of California to recover the amount specified in these ungratified treaties, both in the value of the land promised to be set aside and the other compensation provided, and granted a right of action thereon.

Congress ripened the promise into an equitable claim. The failure of Congress to set apart certain reservations for these Indians in 1852, and its failure to provide the goods, chattels, school houses, teachers, etc. was recognized as a loss to these Indians and was made by the Congress an equitable claim to be paid in money value.

The act does not in any place set out a legal claim. It is the recognition of an equitable claim and is repeatedly so referred to in the jurisdictional act. Congress in its plenary powers can recognize an equitable, a moral claim, or any claim in the conscience of the nation. United States v. Realty Company, 163 U.S. 427, 440, 441.

In the instant case this is clearly admitted and recognized in the last paragraph of section 2 of the jurisdictional act which reads as follows:

“It is hereby declared that the loss to the said Indians on account of their failure to secure the lands and compensation provided for in the eighteen ungratified treaties is sufficient grounds for equitable relief.

It is in the power of Congress to grant any kind of relief which its wisdom dictates. There have been many instances of the recognition of moral claims, even gifts and bounties. Under its general jurisdictional powers the Court of Claims cannot pass on a moral claim, nor can it recognize a case sounding in tort. Radel Oyster Co. v. United States, 78 C. Cls. 816; Nansfield et al. v. United States, 89 C. Cls. 12; Stubbs v. United States, 85 C. Cls. 152. But the Congress has repeatedly sent tort cases to this court for adjudication under special jurisdictional acts. The Congress can confer on this Court jurisdiction to determine any sort of claim which the Congress has converted into a right of action. United States v. Realty Co., *supra*.

In the instant case the Congress not only has recognized an equitable claim but has gone still further. The amount of recovery has been almost definitely defined. The land which is described in the respective treaties is to be valued as a fixed price. The chattels and other articles promised to be supplied are capable of having their value ascertained as of the date of the treaties. The value per acre is fixed in the jurisdictional act and it is only necessary to ascertain the number of acres in the reservations mentioned in the eighteen treaties. The chattels and services are named in the treaties so it is only necessary to ascertain the amount which would purchase them at the time when Congress failed to ratify the treaties.

As against this amount the jurisdictional act provides the Government may plead by way of set off “any payment which may have been made by the United States or moneys heretofore or hereafter expensed to date of award for the benefit of the Indians of California made under specific appropriations for the support, education, health and civilization of Indians in California, including purchases of land.”

There can be no denial of the fact that, when these Indians did not receive the eighteen separate tracts of land set aside for them in the treaties and the other prerequisites therein mentioned, a loss was sustained by them which would not have happened if the Congress had carried out the promise by ratification of the treaties. Years afterward, the Congress recognized this loss to these Indians, and attempted to make restitution in money by converting this loss into an equitable claim and directing this Court to ascertain the amount in dollars and cents and enter a decree when the amount was ascertained.

This case does not involve the payment for land of which the Indians has a cession, or use and occupancy. No legal claim under any treaty or act of Congress setting aside land for the use of the Indians of California can be sustained. The decree can only be for a fixed amount of compensation. There has been no taking which under the Constitution would require just compensation to be paid and therefore would involve interest. The amount awarded would only be in full settlement of a recognized equitable claim which the congress has ordered the Court to ascertain, and, after ascertainment, to enter a decree. The amount so recovered is not to go to the Indians of California per capita nor is it to be disbursed in any other individual manner. Under the jurisdictional act it is to be placed under the care of the Secretary of the Treasury, and draw four percent interest. That is not all. The Congress alone can appropriate from the fund, as established for the Indians of California, from time to time, such use as, in its discretion, seems wise, and even these appropriations are to be for educational, health, industrial and other purposes for the benefit of said Indians including the purchase of lands and building of homes – beneficial purposes for the elevation and progress of these Indians to better citizenship.

The court is of the opinion that the plaintiffs are entitled to recover the value of the land set out and described in the eighteen ungratified treaties at the price per acre named in the jurisdictional act, and the value of the other articles, chattels and services as of the date of the failure of the Senate to ratify the treaties. As this claim does not involve a taking of land by the Government for which just compensation shall be made, but only compensation for an equitable claim, no allowance of interest is permitted or allowable.

On December 4, 1944, the Court issued the following order:

In this case, it appearing that on October 5, 1942, the Court of Claims filed special findings of fact with an opinion holding that the plaintiff Indians were entitled to recover; and it appearing that on February 8, 1943 the Supreme Court of the United States denied the application of the plaintiff Indians for a writ of Certiorari to review the judgment of the Court of Claims; and the mandate of the Supreme Court having been received by this court, the case was referred to a commissioner of the court to ascertain values and to report to the court; and it further appearing that on November 11, 1944, a stipulation was filed, signed on behalf of the plaintiff Indians by Robert W. Kenny, Attorney General of the State of California, counsel for plaintiffs, and on behalf of the defendant by Assistant Attorney General Norman M. Littell, in which stipulation it is stated

I - That Robert W. Kenny is the duly elected, qualified, and acting Attorney General of the State of California and as such is the successor of U.S. Webb and is the duly and lawfully constituted attorney for the plaintiff Indians under the act of Congress of May 18, 1928, 45 Stat. 602, and the act of the Legislature of the State of California, c. 643, Statues of 1927, p. 1082.

II - That the area of land for which the plaintiff Indians are entitled to recover under the aforesaid jurisdictional act as found by this Court in its decision of October 5, 1942, is 8,518,900 acres; that the value of said land per acre as fixed by the aforesaid jurisdictional act is \$1.25; that the total value of said land for which the plaintiff Indians are entitled to recover is the sum of \$10,648,825.

III - That there has been set aside by the United States for the plaintiff Indians as reservations and otherwise, by Executive Orders, acts of Congress or otherwise a total of 611,220 acres of land, which it is agreed had a value of \$1.25 per acre, or a total value of \$764,032.50; that the defendant is entitled to a credit or offset of said sum of \$764,032.50 against plaintiffs' recovery on account of land' that plaintiffs' net recovery on account of land shall be \$10,648,625 minus \$764,032.50, or \$9,584,592.50.

IV - That the definite items provided for in the ungratified treaties involved in this litigation, consisting of goods, wares, merchandise, and other chattels, which would have been furnished if the treaties referred to in Exhibit "A" to the petition herein had been ratified, were of the value of \$1,407,149.48, which amount the plaintiffs are entitled to recover under the jurisdictional act and the aforesaid decision of this Court.

V - That the services and facilities which would have been supplied if the said treaties had been ratified would have been furnished for a period of twenty-five (25) years and would have cost the United States the sum of \$5,762,200 to supply, which amount the plaintiffs are entitled to recover under the jurisdictional act and the aforesaid decision of this court.

VI - That the total amount which it is agreed the plaintiffs are entitled to recover under the aforesaid jurisdictional act and the decision of this court, subject however under the aforesaid act and decision to the offsets specified in the following paragraph **No. VII** of this stipulation, is as follows:

On account of land as specified in paragraphs II and III of this stipulation	\$9,888,592.50
Definite treaty items as specified in paragraph IV of this stipulation	\$1,407,149.48
Services and facilities as specified in paragraph V of this stipulation	<u>\$5,762,200.00</u>
Total	\$17,053,941.98

VII - That the total amount available to the defendant in this action as offsets against the plaintiffs recovery under the terms of the aforesaid jurisdictional act is made up of the following items:

Disbursements made out of specific appropriations for the support, education, health and civilization of Indians in California \$5,547,805.87

Disbursements made out of appropriations for the Indian service generally but by the appropriation acts certain amounts were apportioned to the Indian Service in California \$1,573,249.66

Out of disbursements made for the support and maintenance of the non-reservation Indian schools at Fort Bidwell, Greenville and Riverside, California. \$4,908,044.11

Total **\$12,029,099.64**

VIII - That the aforesaid offsets in the total sum of \$12, 029,099.64, as set out in paragraph VII above, shall be deducted from the total amount which the plaintiff is entitled to recover, as stated in paragraph VI above, namely, \$17,053,941.98, making the net amount for which judgment may be entered by the Court the sum of \$5,024,842.34.

IX IT IS FURTHER STIPULATED AND AGREED by and between the parties to this action that should the Court of Claims accept and approve this stipulation the said Court of Claims may enter judgment for the plaintiffs and against the defendant for the sum of \$5,024,842.34 as stated in paragraph VIII of this stipulation and that said judgment when entered shall be in full and complete settlement, satisfaction and discharge of any and all claims and demands of every kind and character whatsoever which the plaintiff Indians, or any of them, may have against the United States under and by virtue of the Act of May 18, 1928, 45 Stat. 602.

And it further appearing that on November 13, 1944, the commissioner of the court to whom the case was referred filed a memorandum report stating that “net recovery in favor of the plaintiffs is recommended in the sum of \$5,024,842.34”, - now therefore,

IT IS ORDERED this 4th day of December, 1944, that plaintiffs recover of and from the United States the sum of \$17,053,941.98, and that the defendant recover of and from the plaintiffs the sum of \$12,029,099.64 as an offset against the plaintiffs recovery, and that judgment be entered in favor of the plaintiff Indians for the balance of five million twenty-four thousand eight hundred forty-two dollars and thirty-four cents (\$5,024,842.34).

BY THE COURT

Richard S. Whaley
Chief Justice